

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CHARLES F. CARDONE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 06-646-***
	)	
WARDEN THOMAS CARROLL,	)	
DOC-DEL CLASSIFICATION BOARD,	)	
ANTHONY J. RENDINA,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff, Charles F. Cardone, SBI #098159, a pro se litigant who is presently incarcerated, filed this action on October 19, 2006, pursuant to 42 U.S.C. § 1983 without prepayment of the filing fee or a request to proceed in forma pauperis. (D.I. 1.) The case was dismissed on December 6, 2006, when plaintiff did not timely provide a request to proceed in forma pauperis as ordered by the court. (D.I. 5.) Plaintiff filed a motion to reconsider the order, but did not submit the required documents, and the motion was denied. (D.I. 6, 8.)

Plaintiff has now provided all the necessary documentation. Accordingly, the clerk of the court is directed to reopen the case. Now before the court is plaintiff's motion for leave to proceed in forma pauperis. (D.I. 9.) Consistent with 28 U.S.C. § 1915(a)(1) and (2), plaintiff has submitted: (1) an affidavit stating that he has no assets with which to prepay the filing fee; and (2) a certified copy of his prison trust fund account statement for the six-month period immediately preceding the filing of the above-referenced complaint. Based on the plaintiff's submissions, his request to

proceed in forma pauperis is granted.

Notwithstanding the above, pursuant to 28 U.S.C. § 1915(b)(1), plaintiff shall be assessed the filing fee of \$350.00 and shall be required to pay an initial partial filing fee of 20 percent (20%) of the greater of his average monthly deposit or average monthly balance in the trust fund account. In evaluating plaintiff's account information, the court has determined that plaintiff has an average account balance of \$106.37 for the six months preceding the filing of the complaint. The plaintiff's average monthly deposit is \$107.20 for the six months preceding the filing of the complaint. Accordingly, the plaintiff is required to pay an initial partial filing fee of \$21.44, this amount being 20 percent (20%) of \$107.20, the greater of his average monthly deposit and average daily balance in the trust fund account for the six months preceding the filing of the complaint.

**Therefore, the plaintiff shall, within thirty days from the date this order is sent, complete and return the attached authorization form allowing the agency having custody of him to forward the \$2.17 initial partial filing fee and subsequent payments to the Clerk of the Court. FAILURE OF THE PLAINTIFF TO RETURN THE AUTHORIZATION FORM WITHIN 30 DAYS FROM THE DATE THIS ORDER IS SENT SHALL RESULT IN DISMISSAL OF THIS ACTION WITHOUT PREJUDICE. NOTWITHSTANDING ANY PAYMENT MADE OR REQUIRED, THE COURT SHALL DISMISS THE CASE IF THE COURT DETERMINES THAT THE ACTION IS FRIVOLOUS OR MALICIOUS, FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, OR SEEKS MONETARY RELIEF AGAINST A DEFENDANT**


**WHO IS IMMUNE FROM SUCH RELIEF.**

Upon receipt of this order and the authorization form, the Warden or other appropriate official at Delaware Correctional Center, or at any prison at which plaintiff is or may be incarcerated, shall be required to deduct the \$21.44 initial partial filing fee from plaintiff's trust account, when such funds become available, and forward that amount to the Clerk of the Court. Thereafter, absent further order of the Court, each time that the balance in plaintiff's trust account exceeds \$10.00, the Warden or other appropriate official at Delaware Correctional Center, or at any prison at which plaintiff is or may be incarcerated, shall be required to make monthly payments of 20 percent (20%) of the preceding month's income credited to plaintiff's trust account and forward that amount to the Clerk of the Court.

Pursuant to 28 U.S.C. § 1915(g), if plaintiff has had three or more actions dismissed by the court on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted, the court shall deny plaintiff leave to proceed in forma pauperis in all future suits filed without prepayment of the filing fee, unless the court determines that plaintiff is under imminent danger of serious physical injury.

DATED:

3/26/07

  
Honorable Mary Pat Thyne  
U.S. Magistrate Judge

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	)	
Defendants.	)	

**AUTHORIZATION**

I, Charles F. Cardone, SBI #098159, request and authorize the agency holding me in custody to disburse to the Clerk of the Court the initial partial filing fee of \$21.44 and the subsequent payments pursuant to 28 U.S.C. § 1915(b) and required by the Court's order dated \_\_\_\_\_, 2007.

This authorization is furnished to the Clerk of Court in connection with the filing of a civil action, and I understand that the filing fee for the complaint is \$350.00. I also understand that the entire filing fee may be deducted from my trust account regardless of the outcome of my civil action. This authorization shall apply to any other agency into whose custody I may be transferred.

Date: \_\_\_\_\_, 2007.

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Signature of Plaintiff